

## Update: Sexual Assault Benchbook

### CHAPTER 7

#### General Evidence

##### 7.6 Former Testimony of Unavailable Witness

Insert the following text on page 364 after the April 2004 update:

In *People v Walker*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005), the Court of Appeals held that a crime victim's statements to a neighbor and a police officer do not constitute "testimonial statements" for purposes of the Confrontation Clause. In *Walker*, the defendant beat the victim and threatened to kill her. The victim jumped from a second-story balcony and ran to a neighbor's house, and the neighbor called the police. The victim made statements to the neighbor, who wrote out the statements and gave them to the police. The victim did not appear for trial, and her statements were admitted under the excited utterance exception to the hearsay rule. The defendant argued that pursuant to *Crawford v Washington*, 541 US 36 (2005), admission of the victim's statements violated the Confrontation Clause because they were "testimonial statements." The Court rejected the defendant's argument and stated:

"We discern no holding or analysis in *Crawford* that would lead us to conclude that the victim's statements to her neighbor, and the repetition of her statements to responding police officers, were testimonial hearsay violative of the Confrontation Clause."

